

Appendix B

Critical Areas Update Checklist

Each city and county in Washington state is required by the Growth Management Act (GMA) to adopt development regulations that protect critical areas. This checklist is intended to help local cities and towns conduct a quick review of their critical areas ordinances (CAO) to see if they meet the basic requirements of the GMA. Key checks are listed to ensure that the most important components are provided. If your CAO meets these checks, it probably is adequate. If you answer “No” to some of these checks, an update might be warranted. Keep in mind that this checklist doesn’t consider all possibilities and a more detailed review may be needed to determine full compliance.

	Yes	No
Check: Does the CAO include a purpose statement and, if so, is it consistent with the GMA and locally adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Explanation:</i> The CAO should clearly state that it is intended to protect the <i>functions and values</i> of critical areas and protect people, public and private property, and natural ecosystems. Consider RCW 36.70A.170 and 172, and WAC 365-190-020 and 040.		
Check: Does the CAO apply to all development near critical areas, including on neighboring properties?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Explanation:</i> If the ordinance only protects critical areas that are located on the proposal site, critical areas that are located off site, but nearby, may go unprotected from the impacts of the proposed development. To fully protect critical areas, all development that is within a specified distance(s) should be subject to critical areas review. While a critical area may not be located on site, its buffer may extend onto the site of the proposal and that buffer may require protection.		
Check: Does the CAO include a review process for those proposals that are near critical areas?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Explanation:</i> Communities use a variety of different review procedures and there is no single right way to conduct critical areas review. Some require a critical areas permit, while others conduct critical areas review in conjunction with underlying permits. Generally, any time a proposal is near a critical area, the critical areas review process should require the applicant to submit information regarding the nature of the critical area in addition to information about the proposal. It may be appropriate to require a technical report, such as a wetland report, that is prepared by a qualified professional.		
Check: Does the CAO define “qualified professional”?	<input type="checkbox"/>	<input type="checkbox"/>
<i>Explanation:</i> To be consistent with the GMA requirement to protect critical areas, technical reports that define the level of protection required in a specific circumstance, such as wetland reports, need to be prepared by a qualified professional. This definition can vary, but it should be clear that a qualified professional is one with experience, training, and expertise. For some professions, licensing should be required.		

Check: Does the CAO provide a limited set of exemptions? Are those exemptions specific enough that they won't result in significant impacts to critical areas?

Yes

No

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Explanation: Exemptions are an important component of CAOs. Without them, an excessive level of review would be required for minor activities that don't harm critical areas. However, cities and counties should be careful that exemptions do not create a loophole that allows for development that does result in impacts. Common exemptions include:

- Emergencies.
- Remodels that do not extend further into or result in additional harm to the critical area.
- Development that has already completed critical areas review under a previous permit.
- Surveying.
- Walking.

Check: Does the CAO allow for "reasonable" use?

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Explanation: If the CAO precludes all development in some critical areas, such as wetlands and habitat, it may result in the "taking" of property by preventing "reasonable" use of those properties that are completely encumbered. To comply with the U.S. Constitutional requirement to not take property without due process and just compensation, each CAO should include provisions to allow at least a minimal reasonable use of the property. A reasonable use provision should not be used as a general development permit, but as a "pressure valve" only to prevent situations that would otherwise result in a takings.

Check: Does the CAO clearly designate all critical areas that might be found within the jurisdiction?

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Explanation: The GMA requires cities and counties to designate and protect critical areas – RCW 36.70A.170. Designation is the process of clearly defining which areas are critical areas. WAC 365-190-080 provides guidance on designating each of the five types of critical areas:

- Wetlands.
- Frequently flooded areas.
- Critical aquifer recharge areas.
- Geologically hazardous areas.
- Fish and wildlife habitat conservation areas.

While jurisdictions may rely on mapped areas to designate critical areas, it is recommended that critical areas be formally designated by their definition in the code. This allows a jurisdiction to avoid having to demonstrate that they have comprehensively mapped all critical areas within their boundaries, which could be a resource intensive task.

Check: Does the CAO include science-based standards to protect critical areas?

Yes

No

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Explanation: At a minimum, the CAO should state that the functions of the critical areas must be maintained. For some critical areas this might be done by adopting buffers based on science. Other critical areas, such as frequently flooded areas, may be protected by adopting recommended standards for development that occurs within the critical area. Refer to the various science sources listed in the Washington State Department of Community, Trade and Economic Development's (CTED) *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas* for information about standards for each type of critical area.

Check: Did the process to draft your current CAO include the "best available science"?

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Explanation: The GMA requires cities and counties to "include the best available science" when drafting development regulations – RCW 36.70A.172. Note that the GMA does not require communities to go out and conduct new scientific studies, but to include the best science that is *available*. Communities may refer to CTED's *Citations of Recommended Sources of Best Available Science for Designating and Protecting Critical Areas* to locate locally appropriate science. Communities are also advised to contact the regional or state offices of the state departments of Fish and Wildlife, Ecology, and Natural Resources, for assistance with identifying science that is appropriate for their circumstances.

If a community wishes to adopt standards that are different from those advocated by science, it needs to document the reason for the deviation in accordance with WAC 365-195-915.

Check: Was the best available science that was reviewed documented in the record?

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Explanation: In accordance with WAC 365-195-915, cities and counties should make a record of the best available science that was included in the process of drafting the CAO and related policies. The record should identify the specific policies and regulations and the relevant sources of best available science that was included in the decision making process.

Check: Did the CAO drafting process include the public?

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Explanation: In accordance with WAC 365-190-040, cities and counties should involve the public when designating critical areas. Public participation should include outreach to land owners, interest groups, tribal governments, representatives from adjacent jurisdictions, and state agencies.